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IN THE
COURT OF APPEALS OF INDIANA

COACHMEN INDUSTRIES, INC.,	)	
	)	
Appellant-Defendant/Counter-Plaintiff,	)	
	)	
vs.	)	No. 20A03-0603-CV-124
	)	
KER-WOOD, INC.,	)	
	)	
Appellee-Plaintiff/Counter-Defendant.	)	

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable David Bonfiglio, Judge
Cause No. 20D06-0312-CC-00731

January 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Defendant/Counterplaintiff Coachmen Industries, Inc. ("Coachmen") appeals the trial court's judgment in favor of Plaintiff/Counterdefendant Ker-Wood, Inc. ("Ker-Wood") on Coachmen's counterclaim for breach of contract. Because Coachmen is appealing from a negative judgment, it has the burden of showing that the trial court's judgment is contrary to law. Finding that the trial court's judgment is not contrary to law, we affirm.

Facts and Procedural History

Ker-Wood is a Michigan corporation, and Coachmen is an Indiana corporation. Ker-Wood sold and delivered certain goods and materials, namely, cabinet doors, to Coachmen. The parties entered an agreement that provided, in pertinent part:

> 1. [Ker-Wood] must provide on time deliveries of all goods and services ordered by Coachmen. . . .
>
> * * * *
>
> 15. Extraordinary costs incurred by Coachmen (such as excess labor and/or production downtime) due to back orders, incorrect or defective materials, or overshipments, shall be the sole responsibility of the supplier and Coachmen may invoice back the supplier for any such costs. . . .

Appellant's App. p. 37-38. The standard lead time, i.e., the time Ker-Wood had in which to deliver the doors after they were ordered by Coachmen, was fourteen days.

Coachmen had several recreational vehicle plants that independently ordered products from Ker-Wood. Coachmen did not maintain a centralized ordering system, and there was no communication among the plants or Coachmen's main office with respect to orders of cabinet doors. Throughout early 2003, Coachmen ordered and Ker-Wood delivered several orders of doors without incident. Eventually, however, Coachmen

claimed that orders were being delivered late and refused to pay for those orders. During the first week of September 2003, Ker-Wood informed Coachmen that it was stopping production and would not accept any further orders. Thereafter, Ker-Wood continued to produce and deliver products ordered by Coachmen until its inventory was exhausted. On September 5, 2003, Coachmen ordered several hundred doors from Four Woods Laminating, Inc. ("Four Woods") for $33,379.92, including a rush charge of $12,517.47.

On December 29, 2003, Ker-Wood filed a Complaint on Account Stated ("Complaint") against Coachmen, alleging that Ker-Wood had sold and delivered goods to Coachmen for which Coachmen remained indebted to Ker-Wood in the sum of $54,200.70 plus interest. Coachmen then filed its Answer and Affirmative Defenses. One of Coachmen's affirmative defenses is that any amount it owes Ker-Wood has "been properly set-off against amounts due and owing by [Ker-Wood] to [Coachmen]." *Id*. at 26. Coachmen also filed a counterclaim against Ker-Wood, alleging, in part, that Ker-Wood breached its Agreement with Coachmen by failing to timely deliver cabinet doors. Coachmen stated: "Under the terms of the Agreement, Coachmen was entitled to set off any invoices it received against the damages it incurred as the result of Ker-Wood's breach." *Id*. at 33.

Both claims were tried to the trial court on February 11, 2005. Coachmen stipulated that it owed Ker-Wood $54,200.70 for the goods it had received, so the focus of the trial was on the issues raised by Coachmen's counterclaim. One of the pieces of evidence submitted by Coachmen during the trial was Exhibit J. Exhibit J is a summary of all the deliveries from Ker-Wood to Coachmen that Coachmen claims were late. The

document consists of ten columns, and each column provides certain information about each order. The heading for the third column is "Request Date," the heading for the seventh column is "Order Date," and the heading for the eighth column is "Days Late." *Id*. at 72. The document suggests that every order was delivered at least two days after its scheduled due date. The tenth column, on the far right side of the document, is unlabeled. According to Coachmen, the number indicated in this tenth column represents the days of lead time provided by Coachmen to Ker-Wood for each order. For every order that appears on the twenty-two page document, the lead time is at least fourteen days.

The trial court took the matter under advisement and allowed the parties to file post-trial briefs. The parties did so, and on March 18, 2005, the trial court entered the following relevant findings of fact:

> 13. Beginning in June of 2003, various [Coachmen] plants began ordering products from [Ker-Wood] in unprecedented quantities, styles, colors and species.
>
> 14. Many of the orders placed by various plants of [Coachmen] were for small quantities (frequently one or two items) and for which delivery was demanded in less than three (3) working days.
>
> 15. Such orders with small quantities and little or no lead time were frequently labeled "hot," "hot rush," "hot hot," "extremely hot," "ASAP hot," and other designations calculated to convey urgency.
>
> 16. In mid-June of 2003, multiple plants of [Coachmen] began ordering small quantities of various doors for "seminar" or "show" units. All of the orders required delivery in less than four (4) working days, and several required delivery on the same day as the order.
>
> 17. One such order faxed on June 20, 200[3] required delivery of twenty-six (26) different door styles and fifty-five (55) total doors in less than three business days.

18. Separate groups of orders made by multiple plants in June, July and August of 2003 requested delivery of multiple parts, styles, and colors of doors on dates previous to the dates when the orders were faxed from [Coachmen's] plants to [Ker-Wood].

19. During the week of July 14 through July 18, 2003, five different plants of [Coachmen] submitted thirty-six purchase orders to [Ker-Wood], requesting delivery of 2,315 doors on thirteen different due dates.

20. Each time when "hot," "rush," "emergency" or "ASAP" orders for low volume items were received, [Ker-Wood's] production facility would be required to stop production on existing orders, retool and adjust production facilities for the fabrication of the requested materials, and attempt to process the orders in response to the demands.

21. [Coachmen] made no attempts to coordinate, prioritize or facilitate orders from multiple plants to [Ker-Wood] until July 17, when an e-mail message was sent from Nevin Honderich, [Coachmen's Director of Vendor Relations], to various purchasing employees at [Coachmen's] plants, directing that the minimum order quantity for doors per part number should be five.

22. Despite the said e-mail directive, orders from Coachmen continued to be received in quantities of less than five.

23. Several recreational vehicles in multiple plants of [Coachmen] could not be completed during the regular production timetable due to the inability of [Ker-Wood] to conform with [Coachmen's] ordering demands.

24. During the first week of September 2003, [Ker-Wood] informed [Coachmen] that it was stopping production and would not accept any further orders.

25. Thereafter, [Ker-Wood] continued to produce and deliver products ordered by [Coachmen], until its inventory was exhausted.

26. [Ker-Wood] delivered nine thousand ninety (9,090) doors after their scheduled due date.

27. One thousand two hundred and sixty-five (1,265) doors were installed past station.[1]

[1] The doors could be installed "at station," "past station," or "in the yard." *See* Appellant's App. p. 13. We gather that normal installation occurs "at station" and that late installation occurs either "past

> 28. Seven thousand eight hundred and twenty-five (7,825) doors were installed in the yard.[2]

Id. at 10-12 (citations omitted). Based on its findings of fact, the trial court reached the following conclusions of law:

> 29. The Court finds that it was impossible for [Ker-Wood] to deliver the doors ordered during the week of July 14 through July 18, 2003, that is, five different plants of [Coachmen] submitted thirty-six (36) purchase orders to [Ker-Wood], requesting delivery of two thousand three hundred and fifteen (2,315) doors on thirteen (13) different due dates.
>
> 30. The Court determines that those doors, two thousand three hundred and fifteen (2,315), should be subtracted from the overall number of doors that were delivered past their due date because it is the fault of [Coachmen] that they were late.
>
> 31. Of the remaining six thousand seven hundred and seventy-five (6,775) doors, those that were Ordered with less than fourteen days lead time as to their date to be delivered are also subtracted from the numbers that were late. *This number is not known to the Court because the Court finds it impossible to determine those numbers from the several thousand pages of exhibits the parties have submitted to the Court. Therefore the parties are Ordered to meet and determine that number within ninety (90) days or such additional time as the parties may agree*. The parties should indicate, of the remaining doors, the date they were ordered, the date they were delivered and if the door was installed at station, past station or in the yard.
>
> 32. The Court determines it cost [Coachmen] twelve dollars ($12.00) to install a door at station.
>
> 33. The Court determines that for each door that was delivered late when [Ker-Wood] had the fourteen (14) days lead time, it cost [Coachmen] twenty-four dollars ($24.00) to install past station.
>
> 34. The Court determines that for each door that was delivered late when [Ker-Wood] had the fourteen (14) days lead time, it cost [Coachmen] thirty-six dollars ($36.00) to install in the yard.

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station" or "in the yard," with "past station" installation being later and more expensive than "at station" installation and "in the yard" installation being later and more expensive than "past station" installation.

[2] *See supra* note 1.

> 35. The Court will apply those dollar amounts to the doors as indicated. That amount will be set off from the determination made above of what [Coachmen] owes [Ker-Wood] to arrive at a final order in this case. The parties are encouraged to seek agreement in this matter.

Id. at 12-13 (emphasis added).

Despite the trial court's encouragement, the parties were unable to reach an agreement as to the number of doors Ker-Wood delivered late even with a lead time of fourteen days. As such, a hearing was held on October 27, 2005, to determine the amount of damages, if any, suffered by Coachmen. The trial court entered the following order:

> The Court having taken this matter under advisement now finds that [Coachmen] has proposed its original claim absent the amount found in the Court's findings ¶ 30 and not calculated a damage amount considering ¶ 31 of the [March] 18, 2005 Order.
>
> [Ker-Wood], states that no evidence submitted by Coachm[e]n supports [its] claims that would allow a calculation considering ¶ 31 of the [March] 18, 2005 Order.
>
> After careful review of the evidence the Court determines that there is not evidence to calculate the loss of Coachm[e]n as determined in the Court's Order of [March] 18, 2005; therefore, the counter claim fails and Ker-Wood is granted a judgment in the sum of [$]54,200.70.

Id. at 14. The trial court then issued an Amended Judgment, adding $9444.46 in pre-judgment interest to Ker-Wood's damages, thereby increasing the judgment in favor of Ker-Wood to $63,645.16 plus any post-judgment interest. Coachmen now appeals.

Discussion and Decision

On appeal, Coachmen raises two issues: (1) whether the evidence supports the trial court's finding that it could not determine the number of late deliveries on orders on

which Ker-Wood was given at least fourteen days lead time and (2) whether the trial court erred in failing to award damages to Coachmen for the expenses it incurred in ordering doors from Four Woods after Ker-Wood ceased production. Because Coachmen had the burden of proof on its counterclaim for breach of contract at the trial court level, it is appealing from a negative judgment. To prevail, Coachmen must demonstrate that the trial court's judgment is contrary to law. *Infinity Prods., Inc. v. Quandt*, 810 N.E.2d 1028, 1031-32 (Ind. 2004) (citing *DiMizio v. Romo*, 756 N.E.2d 1018, 1021 (Ind. Ct. App. 2001), *trans. denied*), *reh'g denied*. "A judgment is contrary to law only if the evidence in the record, along with all reasonable inferences, is without conflict and leads unerringly to a conclusion opposite that reached by the trial court." *Id*. "In conducting our review, we cannot reweigh the evidence or judge the credibility of any witness, and must affirm the trial court's decision if the record contains any supporting evidence or inferences." *Id*. We address each of Coachmen's claims in turn.

I. Doors Delivered After Scheduled Due Date

Coachmen's first argument on appeal revolves around the trial court's Conclusion of Law 31, which provides:

> Of the remaining six thousand seven hundred and seventy-five (6,775) doors, those that were Ordered with less than fourteen days lead time as to their date to be delivered are also subtracted from the numbers that were late. This number is not known to the Court because the Court finds it impossible to determine those numbers from the several thousand pages of exhibits the parties have submitted to the Court. Therefore the parties are Ordered to meet and determine that number within ninety (90) days or such additional time as the parties may agree. The parties should indicate, of the remaining doors, the date they were ordered, the date they were delivered and if the door was installed at station, past station or in the yard.

Appellant's App. p. 12. After a post-trial hearing, the trial court determined "that there is not evidence to calculate the loss of Coachm[e]n" as contemplated by Conclusion of Law 31. *Id*. at 14. Coachmen contends that "[t]he trial court's finding that it was unable to calculate damages is not supported by the evidence." Appellant's Br. p. 8. Specifically, Coachmen argues that "[Coachmen's] Exhibit J establishes that each and every one of the late deliveries for which Coachmen claimed damages had a lead time of at least 14 days." *Id*.

Initially, we pause to discuss Coachmen's approach at the post-trial hearing. As it does on appeal, Coachmen relied almost entirely on Exhibit J in its attempt to establish the number of doors that Ker-Wood delivered after their scheduled due dates despite having at least fourteen days lead time. This decision was marginal at best. It should have been apparent to Coachmen that the trial court was not going to rely on Exhibit J in determining this number. In its Conclusion of Law 31, the trial court made clear that it was unable to determine this number *even with the aid of Exhibit J*. Even so, when given a second chance to establish the amount of lead time given on the doors at issue, Coachmen again relied on Exhibit J. On appeal, Coachmen continues to rely on Exhibit J. We address Coachmen's arguments.

Nevin Honderich, Coachmen's Director of Vendor Relations, testified at trial that the tenth column of Exhibit J, which is unlabeled, represents the number of days of lead time provided by Coachmen to Ker-Wood for each order. For every order that appears on the twenty-two page document, the lead time is at least fourteen days. Coachmen argues that this evidence is without conflict. If Coachmen is correct, then the trial court

erred in granting judgment in favor of Ker-Wood because the trial court had previously determined that Ker-Wood would be liable for all doors that were delivered after their scheduled due date despite Ker-Wood having at least fourteen days of lead time. *See id*. at 12-13 (Conclusions of Law 31-35). We cannot agree with Coachmen that Exhibit J is without conflict.

Ker-Wood asserts that Exhibit J was shown at trial to be "misleading, incomplete and inaccurate." Appellee's Br. p. 6. Specifically, Ker-Wood notes that Honderich testified that the column entitled "Request Date" actually indicates the due date for an order and that the column entitled "Order Date" actually indicates the date the doors were received by Coachmen. *See* Trial Tr. p. 38-39.[3] Likewise, Ker-Wood stresses that the last column on the document, which Coachmen claims indicates the number of days of lead time for each order, is unlabeled. We agree with Ker-Wood that these ambiguities establish at least some question as to the accuracy and reliability of Exhibit J.

Coachmen continues, however, that the trial court must have found Exhibit J to be accurate and reliable because it relied on the exhibit in finding that 9090 doors were delivered after their scheduled due dates. Coachmen contends that because the trial court relied on Exhibit J for one fact—the number of doors delivered after their due dates—it should rely on Exhibit J for other facts, namely, the number of days of lead time for each order. However, Coachmen does not direct us to any authority for the proposition that a trial court must credit all information on a piece of documentary evidence if it credits one item of information on that piece of documentary evidence. The trial court had the

[3] There are two separate transcripts included in the record on appeal. One transcript is from the original trial in this cause, and the second transcript is from the post-trial hearing on Coachmen's damages. We refer to the trial transcript as "Trial Tr."

opportunity to review Exhibit J. The pertinent column of the exhibit is unlabeled, and as evidenced by Honderich's own testimony, the exhibit is not self-explanatory. In light of these ambiguities, the trial court chose to credit parts of Exhibit J and not others. In our review, we cannot reweigh the evidence. *Quandt*, 810 N.E.2d at 1032. Coachmen has failed to carry the very heavy burden of showing that the trial court's judgment is contrary to law. *See id*. The trial court did not err in granting judgment in favor Ker-Wood on the portion of Coachmen's counterclaim relating to the doors delivered after their scheduled due dates.

II. Doors Ordered From Four Woods

Coachmen also contends that the trial court erred in failing to award damages for the expenses Coachmen incurred in ordering doors from Four Woods after Ker-Wood ceased production. Specifically, Coachmen argues that there is uncontroverted evidence that it paid $4831.55 more to Four Woods than it would have paid to Ker-Wood for the same doors and that it paid an additional $12,517.47 for the rush order on the doors.

Ker-Wood failed to respond to this claim in its brief on appeal. When the appellee fails to brief an issue, we need not undertake the burden of developing an argument on its behalf. *See Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006). Rather, we will reverse the judgment of the trial court if the appellant's brief presents a case of prima facie error. *Id*. Prima facie error in this context is defined as, "at first sight, on first appearance, or on the face of it." *Id*. If the appellant is unable to meet this burden, we will affirm. *Id*. Coachmen is unable to meet this burden.

Ker-Wood does not contest the trial court's finding that it ceased production and ceased deliveries to Coachmen once its inventory was exhausted. Furthermore, there is uncontroverted evidence that Coachmen ordered doors from Four Woods and that it paid a rush charge of $12,517.47. Finally, Honderich testified at trial that Four Woods "produced the orders that Ker-Wood could not fulfill." Trial Tr. p. 43. However, Coachmen has failed to direct us to any evidence that Ker-Wood ever actually *agreed* to produce the doors that the Four Woods doors allegedly replaced. In other words, there is no evidence of any contract between Coachmen and Ker-Wood relating to the doors in question. With no contract, there can be no breach, and with no breach, there can be no damages. As such, Coachmen has failed to establish a case of prima facie error in the trial court's refusal to award damages to Coachmen for the doors it ordered from Four Woods.

Affirmed.

BAKER, J., and CRONE, J., concur.